

Regulations and Amendments

Department of State Part 600

Amendments to NYCRR, Title 19, Chapter 13 for purposes of Executive Law, Article 42. The Department of State adopts a new Part 600 to read as follows:

Section 600.1 Authority, intent and purpose. (a) This Part is adopted pursuant to section 913 of the Executive Law to implement the provisions of the waterfront revitalization and coastal resources act.

(b) This Part is intended to provide for state agencies acting in the coastal area the necessary framework for the consideration and application of the state's policies with respect to waterfront revitalization and coastal resources, as contained in Article 42 of the Executive Law.

(c) It was the intention of the Legislature that the preservation, enhancement and utilization of the natural and man-made resources of the State's unique coastal area take place in a coordinated and comprehensive manner to ensure the proper balance between those natural resources and the need to accommodate the needs of population growth and economic development. Accordingly, it is the intention of this Part to achieve a balance between economic development and preservation that will permit the beneficial use of coastal resources while preventing the loss of living marine resources and wildlife, diminution of open space areas or public access to the waterfront, shoreline erosion, impairment of scenic beauty, or permanent adverse changes to ecological systems.

(d) In adopting the waterfront revitalization and coastal resources act, it was the Legislature's intention that review by state agencies required pursuant to Article 42 of the Executive Law, to determine the consistency of proposed actions with the policies of Article 42 and with any applicable approved local waterfront revitalization program, be coordinated with and made a part of each agency's existing procedures, including reviews conducted under the State environmental quality review act ("SEQR"), (Environmental Conservation Law, Article 8). Accordingly, in compliance with Article 42, this Part provides a framework which is compatible with and capable of coordination with a state agency's existing review responsibilities under SEQR (NYCRR, Title 6, Part 617).

§600.2 Definitions. (a) "Actions" mean either Type I or unlisted actions as defined in SEQR (NYCRR, Title 6, Part 617.2), which are undertaken by state agencies; the term shall not include excluded actions as defined in SEQR (NYCRR, Title 6, Part 617.2) or actions not subject to SEQR pursuant to other provisions of the law.

(b) "Certification" means a notice prepared and filed by a state agency with the secretary at 162 Washington Avenue, Albany, New York 12231, which notice shall: 1) contain a statement that is a certification for purposes of Article 42 of the Executive Law, the name and address of the state agency and the name and telephone number of a person who can provide further information; 2) briefly state and precisely describe the nature, extent and location of the action; and 3) briefly state the reasons supporting certification.

(c) "Coastal area" means the state's coastal waters and the adjacent shorelands, as defined in Article 42 of the Executive Law. It includes lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East river, the Harlem river, the Kill van Kull and Arthur Kill, Long Island sound and the Atlantic ocean, and their connecting water bodies, bays, harbors, shallows and marshes. The specific boundaries of the coastal area are shown on the coastal area map on file in the office of the secretary, as required by section 914(2) of the Executive Law. A copy of the coastal area map has been provided to each state agency with jurisdiction over programs identified by the secretary pursuant to Executive Law, Article 42 as having the potential to affect coastal resources.

(d) "Direct action" or "directly undertaken action" means an action planned and proposed for implementation by a state agency. Direct actions include but are not limited to capital projects, procedure making and policy making.

(e) "Funding" means any financial support given by a state agency, including contracts, grants, subsidies, loans or other forms of direct or indirect financial assistance, in connection with a proposed action.

(f) "Involve agency" means a state agency that has jurisdiction by law to fund, approve or directly undertake a given action.

(g) "Permit" means a permit, lease, license, certificate or other entitlement for use or permission to act that may be granted or issued by a state agency.

(h) "Secretary" means the Secretary of State.

(i) "State agency" means any department, bureau, board, commission, public authority or other agency of the state, including any public benefit corporation, any member of which is appointed by the governor.

§600.3 General rules. (1) No state agency involved in an action shall carry out, fund or approve the action until it has complied with the provisions of Article 42 of the Executive Law.

(2) In accordance with Executive Law, Article 42, actions directly undertaken by state agencies within the coastal area, including grants, loans or other funding assistance, land use and development, planning and land transactions, shall be consistent with the applicable coastal policies set forth in section 600.5 of this Part so as to achieve a balance between the protection of natural resources and the need to accommodate the needs of population growth and economic development, as provided in Executive Law, sections 910 and 912(1). It is intended that this balancing occur in the manner specified in section 600.4 of this Part.

(3) In accordance with Executive Law, Article 42, when the secretary has approved a local government waterfront revitalization program, and has identified state agency program actions which are likely to affect the achievement of the policies and purposes of such approved local waterfront revitalization program, the state agency program actions so identified shall be undertaken in a manner which is consistent to the maximum extent practicable with the approved local waterfront revitalization program.

(4) This Part shall not apply to actions for which a final environmental impact statement has been prepared or for which a determination has been made that the action will not have a significant effect on the environment, pursuant to NYCRR, Title 6, Part 617, prior to the effective date of this Part.

(5) Nothing in this Part shall be construed to authorize or require the issuance of any permit, license, certification, or other approval or the approval of any grant, loan or other funding assistance which is denied by the state agency having jurisdiction, pursuant to other provisions of law or which is conditioned by such agency pursuant to other provisions of law until such conditions are met.

§600.4 Initial review of actions. As early as possible in a state agency's formulation of an action it proposes to undertake, or as soon as a state agency receives an application for a funding or approval action, it shall determine whether the action is located within the coastal area. For purposes of this Part, planning or rulemaking actions which affect land or water in the coastal area shall be deemed to be located therein. At the time it is determined that the action is located within the coastal area the state agency shall follow the review procedures set forth in this Part, including the completion of a coastal assessment form (CAF) in a form prescribed by the secretary. The CAF shall be completed prior to the agency's determination of significance pursuant to SEQR (NYCRR, Title 6, Part 617) so that it can then supplement other information used by state agencies in making determinations of significance pursuant to such Part 617. If it is determined that an action will not have a significant effect on the environment, the CAF is intended to assist state agencies in arriving at their decision as to certification if required by section 600.4. Where any question on the CAF is answered yes, a brief and precise description of the nature and extent of the action shall be provided on the CAF, and a copy of the CAF forwarded to the secretary; provided, however, this requirement does not apply to permit actions unless such actions involve federal review, funding, or approval. For the purposes of complying with the requirements of Executive Law, Article 42, state agencies shall meet the requirements of either paragraph (1), (2) or (3) of this section, whichever applies.

(1) Where a determination is made pursuant to NYCRR, Title 6, Part 617 that an action may have a significant effect on the environment, the agency shall comply with the requirements of NYCRR, Title 6, Part 617, subdivision 617.9(e). Fulfilling such requirements constitutes a determination of consistency as required by Executive Law, Article 42.

(2) Where a determination is made pursuant to NYCRR, Title 6, Part 617 that an action will not have a significant effect on the environment, and where a state agency is undertaking a direct or funding action, other than rulemaking, the state agency, at the time of making its decision on the action, shall file with the secretary a certification that such action will not substantially hinder the achievement of any of the coastal policies set forth in section 600.5 of this Part and whenever practicable will advance one or more of such policies. If the action will substantially hinder the achievement of any policy, the agency shall instead certify that the following four requirements are satisfied: (a) no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy; (b) the action taken will minimize all adverse effects on such policies to the maximum extent practicable; (c) the action will advance one or more of the other coastal policies; and (d) the action will result in an overriding regional or statewide public benefit. Such certification shall constitute a determination of consistency as required by Executive Law, Article 42.

(3) Where a determination is made pursuant to NYCRR, Title 6, Part 617 that an action will not have a significant effect on the environment, and where the action is in the coastal area within the boundaries of an approved local waterfront revitalization program area, and the action is one identified by the secretary pursuant to section 916(1)(a) of the Executive Law, a state agency shall submit, through appropriate existing clearinghouse procedures, information on the proposed action to the local government and, at the time of making its decision on the action, file with the secretary a certification that the action will not substantially hinder the achievement of any of the policies and purposes of the applicable approved local waterfront revitalization program and whenever practicable will advance one or more of such policies. If the action will substantially hinder the achievement of any policy or purpose of the applicable approved local waterfront revitalization program, the state agency shall instead certify that the following three requirements are satisfied: (i) no reasonable alternatives exist which would permit the action to be taken in a manner which would not substantially hinder the achievement of such policy or purpose; (ii) the action taken will minimize all adverse effects on the local policy and purpose to the maximum extent practicable; and (iii) the action will result in an overriding regional or statewide public benefit. Such certification shall constitute a determination that the action is consistent to the maximum extent practicable with the approved local waterfront revitalization program as required by Executive Law, Article 42.

§600.5 Coastal Policies. In evaluating proposed actions against the following policies, state agencies are strongly encouraged to consider the coastal policies, explanations and guidelines contained in the approved Coastal Management Program document.

(a) Development policies.

(1) Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for commercial and industrial, cultural, recreational and other compatible uses.

(2) Facilitate the siting of water dependent uses and facilities on or adjacent to coastal waters.

(3) Encourage the development of the State's existing major ports of Albany, Buffalo, New York, Ogdensburg, and Oswego as centers of commerce and industry, and encourage the siting, in these port areas, including those under the jurisdiction of State public authorities of land use and development which is essential to or in support of waterborne transportation of cargo and people.

(4) Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities which have provided such areas with their unique maritime identity.

(5) Encourage the location of development in areas where public services and facilities essential to such development are adequate, except when such development has special functional requirements or other characteristics which necessitate its location in other coastal areas.

(b) Fish and wildlife policies.

(1) Significant coastal fish and wildlife habitats, as identified on the coastal area map, shall be protected, preserved, and, where practical, restored so as to maintain their viability as habitats.

(2) Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks and developing new resources. Such efforts shall be made in a manner which ensures the protection of renewable fish and wildlife resources and considers other activities dependent on them.

(3) Further develop commercial finfish, shellfish and crustacean resources in the coastal area by:

(i) encouraging the construction of new or improvement of existing on-shore commercial fishing facilities;

(ii) increasing marketing of the State's seafood products; and

(iii) maintaining adequate stocks and expanding aquaculture facilities. Such efforts shall be made in a manner which ensures the protection of such renewable fish resources and considers other activities dependent on them.

(4) Ice management practices shall not damage significant fish and wildlife and their habitats, increase shoreline erosion or flooding, or interfere with the production of hydroelectric power.

(c) Agricultural lands policy.

(1) To conserve and protect agricultural lands in the State's coastal area, an action shall not result in a loss, nor impair the productivity, of important agriculture lands, as identified on the coastal area map, if that loss or impairment would adversely affect the viability of agriculture in an agricultural district or if there is no agricultural district, in the area surrounding such lands.

(d) Scenic quality policies.

(1) Prevent impairment of scenic resources of statewide significance, as identified on the coastal area map. Impairment shall include:

(i) the irreversible modification of geological forms, the destruction or removal of vegetation, the destruction or removal of structures, wherever the geologic forms, vegetation or structures are significant to the scenic quality of an identified resource; and

(ii) the addition of structures which because of siting or scale will reduce identified views or which because of scale, form, or materials will diminish the scenic quality of an identified resource.

(2) Protect, restore and enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the scenic quality of the coastal area.

(e) Public access policies.

(1) Protect, maintain and increase the levels and types of access to public water-related recreation resources and facilities so that these resources and facilities may be fully utilized by all the public in accordance with reasonably anticipated public recreation needs and the protection of historic and natural resources. In providing such access, priority shall be given to public beaches, boating facilities, fishing areas and waterfront parks.

(2) Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided, and it should be provided in a manner compatible with adjoining uses. Such lands shall be retained in public ownership.

(f) Recreation policies.

(1) Water dependent and water enhanced recreation shall be encouraged and facilitated and shall be given priority over nonwater related uses along the coast, provided it is consistent with the preservation and enhancement of other coastal resources and takes into account demand for such facilities. In facilitating such activities, priority shall be given to areas where access to the recreation opportunities of the coast can be provided by new or existing public transportation services and to those areas where the use of the shore is severely restricted by existing development.

(2) Development, when located adjacent to the shore, shall provide for water-related recreation, as a multiple use, whenever such recreational use is appropriate in light of reasonably anticipated demand for such activities and the primary purpose of the development.

(3) Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archeology or culture of the State, its communities or the Nation.

(g) Flooding and erosion hazards policies.

(1) Whenever possible, use nonstructural measures to minimize damage to natural resources and property from flooding and erosion. Such measures shall include:

(i) the set back of buildings and structures;

(ii) the planting of vegetation and the installation of sand fencing and drainage systems;

(iii) the reshaping of bluffs; and

(iv) the flood-proofing of buildings or their elevation above the base flood level.

(2) Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land.

(3) The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs.

(4) Activities or development in the coastal area will be undertaken so as to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs. Primary dunes will be protected from all encroachments that could impair their natural protective capacity.

(5) Activities and development, including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development or at other locations.

(6) Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features.

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(h) Water resources policies.

(1) State coastal area policies and purposes of approved local waterfront revitalization programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already overburdened with contaminants will be recognized as being a development constraint.

(2) Encourage the use of alternative or innovative sanitary waste systems in small communities where the costs of conventional facilities are unreasonably high given the size of the existing tax base of these communities.

(3) Best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into coastal waters.

(4) Discharge of waste materials from vessels into coastal waters will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas.

(5) Best management practices will be utilized to minimize the non-point discharge of excess nutrients, organics and eroded soils into coastal waters.

(i) To safeguard the vital economic, social, and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas.

Department of Environmental Conservation
Part 617 Amendments

SEQR amendments to Part 617 of Title 6 of the NYCRR for purposes of Executive Law, Article 42.

1) Reletter definition items (f), (g), etc. of §617.2 to be (g), (h), etc., and add a new item (f) to read as follows:

"Coastal area" means the state's coastal waters and the adjacent shorelands, as defined in Article 42 of the Executive Law, the specific boundaries of which are shown on the coastal area map on file in the office of the Secretary of State, as required by section 914(2) of the Executive Law.

2) Add a new §617.5(d) to read as follows: For state agencies only, determine whether the action is located in the coastal area. If the action is either a Type I or unlisted action as defined in section 617.2 and is in the coastal area, the provisions of NYCRR, Title 19, Part 600 shall apply.

3) Add new material to §617.9(e) to read as follows: State agency actions in the coastal area, shall be consistent with the applicable policies of Executive Law, Article 42 as contained in NYCRR, Title 19, Part 600, section 600.5, so as to achieve a balance between the protection of natural resources and the need to accommodate social and economic considerations as provided in such policies. When the state agency action in the coastal area is within the boundaries of an approved local waterfront revitalization program and the action is one identified by the Secretary of State pursuant to section 916(1)(a) of the Executive Law, the action shall be consistent to the maximum extent practicable with the applicable policies of such local waterfront revitalization program.

4) Add a new §617.10(e)(6) to read as follows: one copy with the Secretary of State where the action is a state agency action in the coastal area.

5) Renumber §617.14(f)(10)-(12) to be (11)-(13) and add a new item (10) to read as follows:

(10) For state agency actions in the coastal area, an identification of the coastal policies of Executive Law, Article 42 as contained in NYCRR, Title 19, Part 600, section 600.5 which are applicable to such actions and a discussion of the effects of the proposed action on such applicable policies, except when that state agency action in the coastal area is within the boundaries of an approved local waterfront revitalization program area, and the action is one identified by the Secretary of State pursuant to section 916(1)(a) of the Executive Law, the identification and discussion shall instead be of the effects of the proposed action on the applicable policies and purposes of such an approved local waterfront revitalization program.

Amendments to NYCRR, Title 19, Chapter 13 for purposes of Executive Law, Article 42. The Department of State adopts a new Part 601 to read as follows:

Section 601.1 Authority, intent and purpose. This Part is adopted pursuant to section 915 of the Executive Law to implement the optional local government waterfront revitalization program ("LGWRP") provisions of the waterfront revitalization and coastal resources act. It includes:

(1) procedural requirements for voluntary participation by local governments;

(2) criteria for review of local programs by the secretary;

(3) procedural requirements for review and comment on each LGWRP submitted.

§601.2 Submission of LGWRP. (a) Every submission of a LGWRP to the secretary, in order to be deemed a completed submission eligible for approval, must be accompanied by a resolution of the legislative body providing for such submission. In those instances where two or more local governments are cooperatively submitting a LGWRP, resolutions from each of the participating local governments shall be necessary before a submission is deemed complete and eligible for review by the secretary.

(b) Pursuant to the New York City Charter, the Board of Estimate, as the appropriate body, shall approve the New York City Program before it is deemed complete and eligible for review.

(c) Each LGWRP shall include, for purposes of a completed submission eligible for review by the secretary, all of the elements contained in section 915(4) of the Executive Law.

§601.3 Criteria. In order to approve a submitted LGWRP as eligible for the benefits of section 915 of Article 42 of the Executive Law, the secretary must find: 1) that the LGWRP incorporates the criteria listed in section 915(5) of Article 42 of the Executive Law to an extent commensurate with the circumstances of the local government or local governments seeking approval; and 2) that the LGWRP is consistent with the policies of Article 42 of the Executive Law as contained in NYCRR, Title 19, Part 600, §600.5; and 3) after consultation with potentially affected state and federal agencies that the LGWRP will not conflict with any applicable state or federal policy.

§601.4 Procedure for review. (a) Upon receipt of a completed LGWRP the secretary shall circulate the program to such parties as the secretary shall deem appropriate, which parties shall include: 1) every state agency (as defined in Article 42 of the Executive Law) with programs identified in the submitted LGWRP as having the potential to affect the achievement of the waterfront revitalization program; 2) any adjacent local government with contiguous coastal area; 3) the county wherein the LGWRP area is situated; and 4) the regional planning board, if any, wherein the LGWRP area is situated.

(b) Each agency shall have 60 days for review and comment before the secretary can render a decision as to the approvability of such LGWRP.

(c) Amendments to any approved LGWRP shall be reviewed in the same manner as any original LGWRP.

(d) Notice of disapproval by the secretary shall be issued in writing and shall include findings with respect to the criteria which the LGWRP fails to meet. Disapproval of a LGWRP shall be without prejudice and any local government may resubmit a LGWRP without regard to prior disapprovals.

(e) The secretary may, as a condition to approval of a LGWRP, require that notice of certain identified actions of that local government or its agencies be given to the secretary prior to such actions being taken.

§601.5 Approved programs. A LGWRP approved by the secretary shall be eligible for the benefits provided in Article 42 of the Executive Law.

§601.6 (a) The secretary shall periodically review the administration and implementation of every approved LGWRP to assure, among other things, that the local government itself acts consistent with the policies and goals of its approved LGWRP.

(b) The secretary shall, after written notice to the legislative body of the participating local government, revoke approval if at any time he finds that the policies and goals of the approved LGWRP are not being carried out in accordance with the terms of such LGWRP.

§601.7 Withdrawal. A local government may withdraw its approved LGWRP at any time as provided in section 915(10) of the Executive Law. Withdrawal of an approved LGWRP will effect an immediate termination of all benefits accruing under section 916 of the Executive Law, including but not limited to any funding or technical assistance.

DEPARTMENT OF STATE

- (a) State agencies shall complete this assessment form for actions which are subject to Part 600 of Title 19 of the NYCRR. This assessment is intended to supplement other information used by state agencies in making determinations of significance pursuant to the State Environmental Quality Review Act (see 6 NYCRR, Part 617). If it is determined that an action will not have a significant effect on the environment, this assessment is intended to assist state agencies in arriving at their decision as to certification as required by 19 NYCRR § 600.4.
- (b) If any question in subsection (e) on this form is answered "yes," then the proposed action may affect the achievement of the coastal policies contained in Article 42 of the Executive Law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to either (a) making a certification of consistency pursuant to 19 NYCRR Part 600, or (b) if the action is one for which an environmental impact statement is being prepared, making the findings required under SEQRA, 6 NYCRR, § 617.9. If an action cannot be certified as consistent with the coastal policies, it shall not be undertaken.
- (c) Before answering the questions in subsection (e), the preparer should review the coastal policies as explained in 19 NYCRR § 600.5. Actions should be evaluated as to their beneficial and adverse effects upon the coastal area.
- (d) Description of Action
- Type of Action
 - Directly undertaken, pursuant to: _____
 - Funding, pursuant to: _____
 - Permit(s), pursuant to: _____
 - Planning activity(ies), pursuant to: _____
 - Rule, regulation, procedure, policymaking, pursuant to: _____
 - Location of Action, fill in blank(s), as applicable.

County(ies)	Town(s)	City(ies), Village(s)	Site
_____	_____	_____	_____
 - Anticipated Start Date of Action: _____
month/day/year
 - Will the action require review, funding, and/or approval by a federal agency(ies)? If yes, which federal agency(ies) _____
- (e) Coastal Assessment
- | | Yes | No |
|--|-----|----|
| 1. Will the action result in a large physical change to coastal site or physically alter more than two acres of land, land under water, or coastal waters, if located adjacent to the shore, or five acres if elsewhere within the coastal area? | | |
| 2. Will the action be located in or significantly affect the viability of a significant fish or wildlife habitat identified on the coastal area map? | — | — |
| 3. Will the action have a significant effect on the commercial or recreational use of fish and wildlife resources? | — | — |
| 4. Will the action be located in or have a significant effect upon an area identified on the coastal area map as a scenic resource of statewide significance? | | |
| 5. Will the action have any significant visual effect upon a natural or manmade resource which contributes to the scenic quality of the coastal area? | | |
| 6. Will the action be located on or significantly affect the conservation of important agricultural lands identified on the coastal area map? | | |
| 7. Will the action be located in or have a significant effect upon any area included in an approved local waterfront revitalization program? | | |
| 8. Will the action significantly affect existing or the development of future water dependent uses? | — | — |
| 9. Will the action have a significant effect upon the operation of the State's major ports? | — | — |
| 10. Will the action significantly affect land or water uses in and adjacent to the State's small harbors? | — | — |
| 11. Will the action require new or expansion of public services or infrastructure into undeveloped or low density areas of the coast? | — | — |
| 12. Does the action involve an energy facility not subject to Article VII or VIII of the Public Service Law? | — | — |
| 13. Will the action be located in or significantly affect development in designated flood or erosion hazard areas, or on a beach, dune, barrier island, or other feature that functions as a natural protection feature against erosion or flooding? | | |
| 14. Does the action involve mining, excavation or dredging within coastal waters? | — | — |
| 15. Will the action result in a reduction of existing or potential public access to or along the shore? | — | — |
| 16. Does the action involve the sale or change in use of state-owned underwater lands or lands adjacent to the coastline? | — | — |
| 17. Will the action affect existing or potential recreation opportunities? | — | — |
| 18. Will the action affect any structures, districts, areas, or sites of historic, archeological or cultural significance to the State or nation? | — | — |
- (f) If you checked other than (d)(1)(c), and answered yes to one or more questions in subsection (e) on this form, briefly and precisely describe the nature and extent of the proposed action, in the space below, and submit the Department of State copy to the Division of Local Government and Community Services, NYS Department of State, 162 Washington Avenue, Albany, NY 12231.

Preparer's Name: _____ Telephone Number: _____

Title: _____ Agency: _____ Date: _____

DEC Part 505

Pursuant to the Environmental Conservation Law, §§3-0301 and 34-0108, the Department of Environmental Conservation adopts a new Part 505 of Title 6 NYCRR to read as follows:

INTRODUCTION Coastal Erosion Management

Section 505.1 Purpose. (a) The general purpose of this Part is to implement the provisions of Article 34 of the Environmental Conservation Law, the Coastal Erosion Hazard Areas Act. More specifically, this Part defines when the Department will administer a regulatory program within identified coastal erosion hazard areas and establishes standards for the issuance of erosion area permits by the Department. This Part also establishes minimum standards the Department will use in certifying local erosion management programs submitted to the Commissioner.

(b) Land use, development and other activities are regulated in coastal areas subject to serious erosion. The purpose is to minimize or prevent damage or destruction to man-made property, natural protective features and other natural resources, due to inappropriate actions of man.

(c) New construction or placement of structures are regulated to place them a safe distance from areas of active erosion. This is to ensure that such structures are not prematurely destroyed or damaged due to improper siting.

(d) Public investment in services, facilities, or activities which are likely to encourage new permanent development in erosion hazard areas is severely limited.

(e) Publicly financed structures to minimize erosion damage are to be used only where necessary to protect human life or where the public benefits of such structures clearly outweigh the public expenditures.

505.2 Definitions. The following terms used in this Part have the meaning indicated, unless the context clearly requires otherwise:

(a) "Act" means the Coastal Erosion Hazard Areas Act which has been codified as Article 34 of the Environmental Conservation Law, as amended.

(b) "Appurtenances" means minor or accessory structures attached to or placed near a principal structure.

(c) "Barrier island" means a detached, elevated landform surrounded by water, which is essentially parallel to the mainland, and which separates open water from a bay, lagoon, or wetland. Barrier islands usually consist of beaches, dunes, interdunal troughs, bay shores, and vegetation.

(d) "Bay barrier" means an elongate, elevated landform commonly consisting of sand or gravel deposited by longshore drifting. Bay barriers separate open water from wetlands or lagoons and are connected to the mainland at both ends.

(e) "Beach" means the zone of unconsolidated material that extends landward, from the mean low waterline, to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, or to the seaward toe of a dune, whichever is most seaward.

(f) "Bluff" means any bank or cliff with a precipitous or rounded face adjoining a beach or a body of water. The seaward limit of a bluff is the landward limit of its contiguous beach. Where no beach is present the seaward limit is mean low water. The landward limit is the bluff's receding edge.

(g) "Coastal waters" means Lakes Erie and Ontario, the St. Lawrence and Niagara Rivers, the Hudson River south of the federal dam at Troy, the East River, the Harlem River, the Kill van Kull and Arthur Kill, Long Island Sound and the Atlantic Ocean, their connecting water bodies, bays, harbors, shallows, and wetlands.

(h) "Coastline" means the lands adjacent to the state's coastal waters.

(i) "Commissioner" means the Commissioner of Environmental Conservation or his duly authorized representative.

(j) "Debris line" means a linear accumulation of waterborne debris deposited by high waters on a beach.

(k) "Department" means the Department of Environmental Conservation.

(l) "Dune" means a ridge or hill of loose, windblown, or artificially placed material, principally sand.

(m) "Erosion" means the loss or displacement of land due to the action of waves, currents, tides, wind-driven water, waterborne ice, or other impacts of storms. It also means the loss or displacement of land due to the action of wind, runoff of surface waters, or groundwater seepage.

(n) "Erosion area permit" means the written Departmental approval required by this Part for the undertaking of any regulated activity within erosion hazard areas as shown on erosion hazard maps.

(o) "Erosion hazard area" means an area of the coastline which is:

- (1) a structural hazard area, or
- (2) a natural protective feature area.

(p) "Erosion hazard map" means the final map issued by the Commissioner which delineates the boundaries of erosion hazard areas subject to regulation under this Part.

(q) "Erosion protection structure" means a structure specifically designed to prevent erosion such as a groin, jetty, seawall, revetment, bulkhead, or breakwater. Artificial beach nourishment projects are also regulated as erosion protection structures.

(r) "Existing structures" means those structures and appurtenances in existence within erosion hazard areas on the effective date of any erosion hazard area local law or ordinance enacted by a local government pursuant to Article 34 of the Environmental Conservation Law or on the effective date of this Part, whichever is first. Existing structures also includes structures and appurtenances which were initially constructed outside a coastal erosion hazard area, but as a result of additional shore recession are located in a revised coastal erosion hazard area.

(s) "Local government" means a village, town (outside the area of any incorporated village), city, or county.

(t) "Major addition" means an addition which results in a 25 percent or greater increase in the ground area coverage of a structure. The increase will be calculated as the ground area coverage to be added, including any additions previously constructed under an erosion area permit, divided by the ground area coverage of "existing structures" as defined in subdivision (r) above.

(u) "Movable structures" means structures designed and constructed to be readily relocated with minimum disruption of intended use.

(v) "Natural protective features" means beaches, dunes, sandbars, spits, shoals, barrier islands, bay barriers, nearshore areas, bluffs, and wetlands, and the vegetation thereon.

(w) "Nearshore area" means those lands under water beginning at the mean low waterline and extending in a direction normal to the shoreline to a point where mean low water depth is 15 feet, or to a horizontal distance of 1000 feet from the mean low waterline, whichever is greater.

(x) "Person" means any individual, public or private corporation, political subdivision, government agency, partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(y) "Primary dune" means the most seaward major dune where there are two or more parallel dune lines within a coastal area. Where there is only one dune present it is the primary dune. Occasionally one or more relatively small dune forms exist seaward of the primary dune. For the purposes of this Part, such forms will be considered to be part of the primary dune. The seaward limit of a primary dune is the landward limit of its fronting beach. The landward limit of a primary dune is 25 feet landward of its landward toe.

(z) "Receding edge" means the most landward line of active erosion, or in cases where there is no discernible line of active erosion, it is the most seaward line of permanent vegetation.

(aa) "Recession rate" means the rate, expressed in feet per year, at which an eroding shoreline moves landward.

(bb) "Regional permit administrator" means the person designated to process permits in each Regional Office of the Department.

(cc) "Regulated activity" means the construction or placement of a structure, or any action or use of land which materially alters the condition of land, including grading, excavating, dumping, mining, dredging, filling, or other disturbance of soil.

(dd) "Sandbar" means an elongate offshore ridge, mound or bank of unconsolidated material such as sand or gravel, which is submerged at high tide. Sandbars are often located at the mouth of a river or estuary, or are located a short distance from, and usually parallel to, a beach.

(ee) "Secondary dune" means the major dune immediately landward of the primary dune. The seaward limit of a secondary dune is the landward limit of its fronting primary dune. The landward limit of a secondary dune is 25 feet landward of its landward toe.

(ff) "Shoal" means a detached elevation of the bottom of a sea, lake, bay, or river, consisting of or covered by sand, mud, gravel or other unconsolidated material. Shoals are covered by less than 6 feet of water at mean low water.

(gg) "Significant fish and wildlife habitat" means those habitats which:

- (1) are essential to the survival of a large portion of a particular fish or wildlife population, or
- (2) support rare or endangered species, or
- (3) are found at a very low frequency within a geographic area, or
- (4) support fish or wildlife populations having significant commercial or recreational value, or
- (5) would be difficult or impossible to replace.

(hh) "Spit" means a long, narrow arm of land commonly consisting of sand or gravel, deposited by longshore drifting, and having one end attached to the mainland and the other terminating in open water.

(ii) "State agency" means any department, division, bureau, commission, board, public authority, or other agency of the state. Any public benefit corporation, any member of which is appointed by the governor, is a state agency.

(jj) "Structural hazard area" means those shorelands, other than natural protective features, subject to erosion and located landward of shorelines receding at an average annual rate of 1 foot or more per year. The inland boundary of a structural hazard area is calculated by starting at its receding edge and measuring along a line which is normal to the line of mean low water a distance which is 40 times the long-term average annual recession rate.

(kk) "Structure" means any object constructed, installed or placed on land or in water including, but not limited to, a building, shed, garage, mobile home, tank, pier, dock, jetty, wharf, bulkhead, or any addition to or alteration of the same.

(ll) "Toe" means the lowest point on a slope of a dune or bluff.

505.3 Functions of natural protective features. (a) Natural features such as beaches, bluffs, dunes, barrier islands, sandbars, shoals, nearshore areas, spits, bay barriers and wetlands, and the vegetation thereon, protect coastal areas and human lives from wind and water erosion and storm-induced high water. Inappropriate activities of man may diminish or eliminate entirely the erosion buffering function of natural protective features.

(b) The specific functions and protective values of different types of natural protective features may vary. Certain types of natural protective features are intrinsically better suited for certain types of uses, activities

or development than others. The standards and development restrictions of this Part that apply to regulated activities within specific types of natural protective features are based on:

(1) the protective functions that specific types of natural protective features provide, and

(2) the interaction between specific types of natural protective features and physical coastal processes.

(c) Described below are the erosion protection functions of various types of natural protective features and their relationship to physical coastal processes.

(1) Beaches buffer shorelands from erosion by absorbing wave energy that otherwise would be expended on the toes of bluffs or dunes. Steep, high, wide beaches protect shorelands from erosion more effectively than flat, low, narrow ones. Beaches also act as a reservoir of sand or other unconsolidated material for longshore littoral transport and offshore sandbar and shoal formation.

(2) Bluffs protect shorelands and coastal development by absorbing the often destructive energy of open water. Like dunes, bluffs are of greatest protective value during times of storm-induced high water. Bluffs are a source of depositional material for beaches and other unconsolidated natural protective features.

(3) Dunes, along with bluffs and beaches, buffer shorelands from the energy of open water and are of greatest protective value during conditions of storm-induced high water. The two primary functions of dunes are prevention of wave overtopping and storage of sand for coastal processes. High, vegetated dunes provide a greater degree of protection than low, unvegetated ones. The key to maintaining a stable dune system is the establishment and maintenance of beachgrass or other vegetation on the dunes.

(4) The protective functions of barrier islands reflect those of beaches and dunes, their major components. Because barrier islands often protect some of the most biologically productive as well as developed coastal areas, their value as protective features is especially great. The key to the maintenance of barrier islands and the protection provided by them is the preservation of their dunes and assurance that supplies of sand or gravel are not artificially impeded from nourishing barrier island beaches.

(5) Sandbars control the orientation of incoming waves and remove a substantial amount of wave energy before it reaches the shoreline. Sandbars often serve as reservoirs of sand that are eventually returned to upper beach areas by natural processes. Sandbars also promote the development of icecap formations which help to protect shorelines during winter storms.

(6) Shoals and nearshore areas function similarly to sandbars because they absorb incoming wave energy by decreasing wave length and velocity. Shoals and nearshore areas also function as reservoirs of sand, gravel, and other unconsolidated material.

(7) Spits and bay barriers are similar to barrier islands and function like them by protecting adjacent bays, wetlands, shellfish beds, and other natural areas as well as mainland development. The key to maintaining relatively stable spits and bay barriers is to protect and preserve their dunes and to ensure that longshore littoral transport to them is not obstructed.

(8) Wetlands function similarly to nearshore areas, shoals and sandbars by reducing wave energy before it can be expended on the shoreline. The roots of wetland vegetation bind fine grained silts, clays and organic matter to form a fairly cohesive bottom which resists erosion.

DEPARTMENT REGULATION OF COASTAL EROSION HAZARD AREAS

505.4 Applicability. (a) This section enumerates the instances when the Department will exercise jurisdiction over the issuance of erosion area permits. With the exception of direct actions by state agencies, the Department will not assume or exercise such jurisdiction until after all appropriate local levels of government have had an opportunity to assume and exercise such jurisdiction.

(b) Any state agency that proposes to undertake any regulated activity within an identified erosion hazard area must first obtain an erosion area permit from the Department.

(c) The Department is the regulatory authority and will process erosion area permit applications for regulated activities within the City of New York when:

(1) New York City fails to submit to the Commissioner an erosion hazard area local law or ordinance within six months after the filing of the applicable erosion hazard maps, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0105(3) of the Act, and, the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(2) New York City's proposed erosion hazard area local law or ordinance is not approved by the Commissioner within six months after the filing of the applicable erosion hazard maps, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0105(3) of the Act, and the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(3) The Commissioner revokes his approval of New York City's erosion hazard area local law or ordinance because of improper administration or enforcement.

(d) The Department is the regulatory authority and will process erosion area permit applications for regulated activities within any county outside New York City when:

(1) A county outside New York City fails to submit to the Commissioner an erosion hazard area local law or ordinance within six months after receipt of notification as required by subdivision 34-0106(1) of the Act, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0106(3) of the Act, and the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(2) A county's proposed erosion hazard area local law or ordinance is not approved by the Commissioner within six months after the filing of the applicable erosion hazard maps, or within such time as may be extended by the Commissioner pursuant to subdivision 34-0106(3) of the Act, and the Department meets the public hearing and notification requirements of subdivision 34-0107(2) of the Act; or

(3) The Department does not designate a county to administer a city, town, or village erosion hazard area local law or ordinance which has been revoked because of improper administration or enforcement; or

(4) The Commissioner revokes his designation of a county to administer and enforce a city, town or village erosion hazard area local law or ordinance because of improper administration or enforcement; or

(5) The Commissioner revokes his approval of a county erosion hazard area local law or ordinance because of improper administration or enforcement.

505.5 Permits; regulatory procedures. (a) Any person proposing to undertake a regulated activity within a designated erosion hazard area must first obtain an erosion area permit.

(b) Permit applications are available from each regional office of the Department. Applications must be made on a form prescribed by the Department, and must include the following information:

(1) a description of the proposed activity, and

(2) a map drawn to scale, showing the location of the proposed activity, and

(3) any additional information the department may require to properly evaluate the proposed activity. Permit applications are not complete until the appropriate fee, as specified in section 505.15 of this Part, is submitted. Completed permit applications should be submitted to the appropriate regional permit administrator.

(c) Before the Department issues an erosion area permit for a state agency activity within an area having an erosion hazard area local law or ordinance the Department must first make a finding that the standards and criteria of the local law or ordinance, adopted pursuant to section 34-0108 of the Act, have been met.

(d) The procedures of Part 621 of this Title (Uniform Procedures) govern the processing of permit applications under this Part and the modification, renewal, suspension, and revocation of erosion area permits.

(e) All regulated activities are subject to the review procedures required by the State Environmental Quality Review Act (SEQR), Article 8 of the Environmental Conservation Law. The applicant may be required to submit information necessary for compliance with SEQR in addition to information required under this Part.

(f) An erosion area permit may be issued with conditions and limita-

tions as are necessary to ensure compliance with the policies and provisions of the Act and of this Part.

505.6 Standards for issuance of erosion area permits. An erosion area permit will be issued only if the Commissioner finds that the proposed regulated activity:

(a) is reasonable and necessary, considering reasonable alternatives to the proposed activity and the extent to which the proposed activity requires a shoreline location, and

(b) will not cause a measurable increase in erosion at the proposed site or at other locations, and

(c) minimizes adverse effects to natural protective features, existing erosion protection structures, or natural resources including, but not limited to, significant fish and wildlife habitats and shellfish beds.

505.7 Restrictions on regulated activities within structural hazard areas. (a) Applicability. The regulated activities described in this section, when undertaken in structural hazard areas, are subject to the standards of this section and the minimum setback requirements included in section 505.10 of this Part.

(b) Movable structures. Movable structures and their additions may be constructed or placed within a structural hazard area only if an erosion area permit has been granted. Permit requirements include the following:

(1) No permanent foundation is attached to the movable structure and any temporary foundations are removed at the time the structure is moved. Below grade footings will be allowed if satisfactory provision is made for their removal.

(2) Notwithstanding the setback distances of section 505.10 of this Part, no movable structure may be placed or constructed such that it's weight places an excessive ground loading on a bluff according to accepted engineering practice.

(3) A plan for the landward relocation of a movable structure and it's appurtenances, when threatened by shoreline recession, must be included with each erosion area permit application.

(4) Movable structures and appurtenances which have been located within an erosion hazard area, pursuant to an erosion area permit, must be removed prior to the time the receding edge reaches a distance from the structure equal to 2 times the long-term average annual shoreline recession rate established for that site. Debris from structural damage which may occur as a result of sudden, unanticipated bluff edge failure or erosion must be removed within 60 days of the damaging event.

(5) The last owner of record, as shown on the latest assessment roll, of real property upon which a movable structure is placed is responsible for removing that structure and its foundation and appurtenances, unless the last owner of record and the owner of the structure, if the structure is not owned by the last owner of record, have made an agreement providing otherwise in a form acceptable to the Department.

(c) New nonmovable structures or major additions to existing structures. The construction or placement of a nonmovable structure, or major nonmovable addition to an existing structure, is allowed within a structural hazard area only if the structure is protected by an erosion protection structure approved pursuant to this Part. Such construction or placement is subject to the permit requirements of this Part.

(d) An erosion area permit is required for the installation of publicly-owned or publicly-serviced distribution, transmission, or collection systems for gas, electricity, water, or wastewater. Systems installed on mainland shorelines must be located landward of the shoreline structures being served.

505.8 Restrictions on regulated activities within natural protective feature areas.

(a) Applicability. The regulated activities described in this section, when undertaken in natural protective feature areas, are subject to the restrictions of this section and the minimum setback requirements in section 505.10 of this Part.

(b) Shoals, sandbars, and nearshore areas. The following restrictions and requirements apply to regulated activities in shoals, sandbars, and nearshore areas.

(1) Mining, excavation, and dredging, which diminishes the erosion protection afforded by shoals, sandbars, or nearshore areas is prohibited. However, erosion area permits for dredging may be issued for constructing or maintaining navigation channels, bypassing sand around natural and manmade obstructions, or artificial beach nourishment.

(2) An erosion area permit for deposition of material on shoals, sandbars, or nearshore areas will be issued only when acceptable material is used.

(3) An erosion area permit is required for new construction, modification, or restoration of docks, piers, wharves, groins, jetties, seawalls, bulkheads, breakwaters, and artificial beach nourishment. Normal maintenance or repair of such structures does not require an erosion area permit.

(4) Exception. The permit requirement of the preceding paragraph does not apply to docks, piers, wharves, or structures built on floats, columns, open timber, piles, or similar open-work supports having a top surface area of 200 square feet or less. Docks, piers, wharves, or other structures built on floats and which are removed in the fall of each year are similarly excepted.

(c) Beaches. The following provisions apply to regulated activities on beaches:

(1) Excavation or mining which diminishes the erosion protection afforded by beaches is prohibited.

(2) An erosion area permit for deposition of material on beaches will be issued only for expansion or stabilization of beaches; appropriate material must be used.

(3) Beach grooming and clean-up operations do not require an erosion area permit.

(4) An erosion area permit is required for new construction, modification, or restoration of existing docks, piers, wharves, boardwalks, groins, jetties, seawalls, bulkheads, breakwaters and artificial beach nourishment. Normal maintenance or repair of such structures is not subject to the permit requirements of this Part.

(5) The following restrictions apply to the use of motor vehicles on beaches:

(i) motor vehicles must operate seaward of the upper debris lines at all times. On those beaches where no debris line exists motor vehicles must operate seaward of the toe of the primary dune; and

(ii) motor vehicles must not travel on vegetation.

(6) Active bird nesting and breeding areas must not be disturbed.

(d) Bluffs. The following restrictions and requirements apply to regulated activities on bluffs.

(1) The removal, excavation, or mining of bluffs is not allowed except where:

(i) the minor modification of a bluff is done in accordance with conditions stated in an erosion area permit issued for the construction of an erosion protection structure; or

(ii) a bluff cut is made in a direction normal to the shoreline for the purpose of providing shoreline access. Such proposed excavation must be done in accordance with conditions stated in an erosion area permit.

(2) Vehicular traffic is prohibited on bluffs.

(3) An erosion area permit is required for new construction, modification, or restoration of erosion protection structures, walkways or stairways. Normal maintenance or repair of such structures does not require an erosion area permit.

(4) All development is prohibited on bluffs unless specifically allowed by subdivision 505.8(d) of this Part.

(5) Active bird nesting and breeding areas must not be disturbed.

(e) Primary dunes. The following restrictions and requirements apply to regulated activities on primary dunes.

(1) Primary dunes must not be mined, excavated, or removed.

(2) Clean sand obtained from excavation, dredging, or beach grading may be deposited on a primary dune, or on an area formerly a primary dune, to increase its size or restore it. Such deposition is subject to erosion area permit requirements.

(3) All development is prohibited on primary dunes, except elevated walkways, stairways, or other approved means, to provide pedestrian or vehicular access to beaches. Construction or placement of such elevated walkways, stairways or other structures is subject to erosion area permit requirements.

(4) Planting and fencing, to stabilize or entrap sand in order to maintain or increase the profile of dunes, are allowed. Such activities do not require an erosion area permit.

(5) Vehicular traffic is prohibited on primary dunes, except in those areas designated for dune crossing.

(6) Foot traffic which causes sufficient damage to primary dunes to diminish the erosion protection afforded by them is prohibited. Pedestrian passage across primary dunes must utilize elevated walkways and stairways or other specially designed dune crossing structures.

(7) Active bird nesting and breeding areas must not be disturbed.

(f) Secondary dunes. The following restrictions and requirements apply to regulated activities on secondary dunes.

(1) Secondary dunes must not be mined, excavated or removed such that the erosion protection afforded by them is diminished.

(2) Clean sand obtained from excavation, dredging, or beach grading may be deposited on a secondary dune, or an area formerly a secondary dune, to increase its size or restore it. Such deposition is subject to erosion area permit requirements.

(3) The construction or placement of a structure, or major addition to an existing structure, requires an erosion area permit. Permit requirements include:

(i) the lowest floor of a new structure or major addition to an existing structure must be built on adequately anchored pilings at least four feet above the surface of the secondary dune, and

(ii) the space below the lowest floor must be left open and free of obstructions.

(4) Planting and fencing to stabilize or entrap sand in order to maintain or increase the profile of dunes, are allowed. Such activities do not require an erosion area permit.

(g) Regulated Wetlands. Article 25 of the Environmental Conservation Law, the Tidal Wetlands Act, identifies the erosion and flooding damage protection from storm tides and waves provided by tidal wetlands. Article 24 of the Environmental Conservation Law, the Freshwater Wetlands Act, identifies erosion, flood and storm control benefits provided by freshwater wetlands. Because tidal and freshwater wetlands subject to regulation are protected and regulated for their erosion and storm control values by other Parts of this Title, erosion area permits are not required for regulated activities within them as long as the policies, purposes, and permit requirements of 6 NYCRR, Parts 505, 561, 662, 663, and 664 are met.

(h) Nonregulated freshwater wetlands must not be filled, mined, excavated, modified, or otherwise disturbed such that the erosion protection afforded by them is diminished. Regulated activities in freshwater wetlands which are not subject to regulation under the Freshwater Wetlands Act are subject to the permit requirements of this Part.

505.9 Erosion protection structures. Construction of erosion protection structures is expensive, often only partially effective over time, and may even be harmful to adjacent or nearby properties. In some areas of the coastline major erosion protection structures of great length would be required to effectively reduce future damages due to erosion. However, in those cases where a non-structural approach to reducing erosion damages is not feasible, construction of an erosion protection structure might be warranted. In such cases, the construction, modification or restoration of erosion protection structures is subject to the following standards and requirements:

(a) An erosion area permit is required for construction, modification, or restoration of erosion protection structures. Normal maintenance or repair of such structures does not require an erosion area permit.

(b) All erosion protection structures must be designed and constructed according to sound engineering principles, which have demonstrated success in controlling long-term erosion. The protective measures must have a reasonable probability of controlling erosion on the immediate site for at least 30 years.

(c) A long-term maintenance program must be included with every permit application for construction, modification, or restoration of an erosion protection structure. That program must include specifications for periodic maintenance of degradable materials, periodic replacement of removable materials, and financial commitments to assure the accomplishment of these requirements.

(d) All materials used in such structures must be durable and capable of withstanding inundation, wave impacts, weathering, and other effects of storm conditions. Individual component materials may have a working life of less than 30 years only when a maintenance program ensures that they will be regularly maintained and replaced as necessary to attain the required 30 years of erosion protection.

(e) The construction, modification, or restoration of erosion protection structures must:

(1) ensure that there will not be any measurable increase in erosion at the development site or other locations; and

(2) minimize adverse effects to natural protective features, existing erosion protection structures, and natural resources such as significant fish and wildlife habitats.

505.10 Setback requirements. (a) Regulated activities within structural hazard areas are subject to the following setback requirements and restrictions.

(b) Setback for movable structures within structural hazard areas.

(1) No movable structure, additions, or appurtenances thereto, may be placed closer to the receding edge than a distance equal to the elevation differential between mean low water and the bluff's receding edge, except:

(i) where the elevation differential is less than 15 feet a setback of 15 feet is required,

(ii) where the elevation differential is greater than 40 feet a setback of 40 feet is required.

(2) No movable structure, additions, or appurtenances thereto, may be placed within 25 feet of the landward toe of a primary dune.

(3) Where there are no bluffs or dunes present, no movable structure, additions or appurtenances thereto, may be placed within 25 feet of the landward limit of a beach.

(c) Setbacks for non-movable structures which are protected by approved erosion protection structures within structural hazard areas.

(1) Where structural protection has been constructed and is adequately maintained the setback requirement established for the protected section of shoreline will reflect the effectiveness of such protection. The setback requirement will continue to be applied to these protected areas as long as:

(i) the integrity of the structural protection is maintained, or restored at any time partial failure occurs, as part of a committed maintenance program, and

(ii) continued maintenance or restoration activities do not cause damage to adjacent or nearby properties or exacerbate erosion conditions thereon.

(2) If the Department determines that adequate maintenance is not being provided for an existing erosion protection structure, the Department will modify the setback requirement for the protected section of shoreline.

(3) Modification or restoration of an erosion protection structure, either to augment existing structures or to replace the existing structure with a new design, will be considered as a newly proposed structure. Where new erosion protection structures are approved and constructed the setback requirements are determined by the Department based on:

(i) the anticipated stability and durability of the structures, and
(ii) commitment to a maintenance program for the proposed structures.

505.11 Appeal of erosion hazard area designation.

(a) Pursuant to subdivision 34-0108(2) of the Act, any person who owns real property within a designated erosion hazard area identified pursuant to subdivision 34-0104(3) of the Act, may appeal the designation of such real property.

(b) Erosion hazard area designation appeals may be made at any time after the final identification of the subject lands has been completed. The procedural steps leading to final identification of erosion hazard areas are outlined in subdivision 34-0104(3) of the Act.

(c) Any person wishing to make an appeal pursuant to this section must complete an erosion hazard area designation appeal application and submit it to the Department. Appeal applications are available at Department regional offices and the Bureau of Flood Protection at the central office in Albany. Appeal applications are not complete until the applicant provides all necessary information and the appropriate fee.

(d) The Commissioner will decide such appeal within 30 days after receipt of a complete appeal application, and will adjust the erosion hazard area boundaries accordingly.

(e) The sole acceptable basis for an erosion hazard area designation appeal is technical information indicating that:

(1) the long-term average annual rate of shoreline recession was calculated incorrectly, or

(2) the subject area was erroneously identified as a natural protective area.

505.12 Emergency activities. (a) The permit requirements of section 505.5 of this Part do not apply to emergency activities that are immediately necessary to protect public health or safety, or to prevent damage to natural resources. Whenever emergency activities are undertaken, as allowed by this subdivision, damage to natural protective features and other natural resources must be minimized. Within two working days after the commencement of emergency measures, the person responsible for taking those measures must:

(1) notify the appropriate Regional Permit Administrator (see 6 NYCRR Appendix 1) and describe the emergency and the resources or life whose protection was sought, and

(2) describe the measures which were taken to secure such protection.

(b) After completion of the emergency measures, the Department may require such information in writing.

505.13 Bond. The Department may require a bond or other form of financial security if it determines that a person submitting an application for an erosion area permit has a record of non-compliance with the terms and conditions of permits issued by the Department. Such security must be in an amount, and with surety and conditions satisfactory to the Department, to ensure compliance with the conditions stated in the erosion area permit.

505.14 Variances. (a) When an applicant can demonstrate that the strict application of the standards, development restrictions, or other requirements of sections 505.7, 505.8, 505.9 or 505.10 of this Part will cause practical difficulty or unnecessary hardship, they may be varied or modified, provided that the following criteria are met:

(1) the public benefits clearly outweigh the long-term adverse effects for any proposed activities and development where public funds are utilized; and

(2) no reasonable, prudent, alternative site is available; and

(3) all responsible means and measures to mitigate adverse impacts on natural systems in the area have been incorporated into the project design and will be implemented at the developers expense; and

(4) the development will be reasonably safe from flood and erosion damage; and

(5) the variance requested is the minimum necessary to overcome the practical difficulty or hardship which was the basis for requesting it.

(b) Any person wishing to make a request for a variance must do so in writing. The variance request must specify the standard, restriction, or requirement to be varied and how the requested variance meets the criteria established in subdivision (a) of this section. The burden of demonstrating that the requested variance meets these criteria rests entirely with the applicant.

(c) The regional permit administrator may on his own motion treat an application for a permit under this Part as a request for a variance and may request from the applicant the information required by this section.

505.15 Fees. (a) Applications for erosion area permits and erosion hazard area designation appeals must be accompanied by a certified check or money order made payable to the Department of Environmental Conservation in the amount specified in subdivision 505.15(c) of this Part.

(b) If an application is withdrawn before it is determined complete, the fee will be returned to the applicant upon request.

(c) Fees for review of applications.

(1) Appeal of erosion hazard area designation, \$50.

(2) Construction or placement of structures other than erosion protection structures, docks, piers, and wharves, \$40.

(3) Excavation, grading, mining, or filling:

(i) projects not exceeding 100 cubic yards, \$25.

(ii) projects greater than 100 cubic yards, \$50.

(4) Dredging:

(i) projects not exceeding 100 cubic yards, \$25.

(ii) projects greater than 100 cubic yards, \$50.

(5) Construction or modification of docks, piers, or wharves:

(i) docks, piers, or wharves on piles, \$35.

(ii) docks, piers, or wharves on fill, \$50.

(iii) all other docks, piers, or wharves, \$25.

(6) Construction or modification of erosion protection structures:

(i) structures not exceeding 100 linear feet, \$50.

(ii) structures greater than 100 linear feet, \$100.

(7) All projects or activities not listed in paragraphs (1) through (6) of this section, \$25.

(d) When a project involves two or more applications for Department permits which are to be reviewed concurrently and for which fees are required, the fee charged will be 80 percent of the total fee required or the highest single fee whichever is greater.

(e) When an owner of real property appeals the designation of that real property as an erosion hazard area pursuant to section 505.11 of this Part and such appeal is successful, resulting in an amendment to an erosion hazard map, the erosion hazard area designation appeals fee will be refunded.

505.16 Severability. The provisions of the Act and this Part are severable. If any clause, sentence, paragraph, subdivision or Part is adjudged invalid by a court of competent jurisdiction the effect of such order or judgment is confined to the controversy in which it was rendered. Such order or judgment does not affect or invalidate any other provisions of or their application to other persons and circumstances.

LOCAL REGULATION OF COASTAL EROSION HAZARD AREAS

505.17 Submission of local coastal erosion management programs. Local governments must submit local coastal erosion management programs to the Commissioner for certification after the erosion hazard maps which cover their area of jurisdiction have been filed. The procedures, requirements, and time limitations for such submissions are described by sections 34-0105 and 34-0106 of the Act.

505.18 Minimum standards for certification of local coastal erosion management programs.

(a) Coastal erosion management programs submitted by local governments to the Commissioner for certification pursuant to subdivisions 34-0105(1) and 34-0106(1) of the Act must meet, at a minimum, the standards, restrictions, and requirements set forth in subdivisions 505.5(a), 505.5(b), 505.5(c) and 505.5(f), and sections 505.6, 505.7, 505.8, 505.9, 505.10, 505.12 and 505.14 of this Part.

(b) Whenever terms relating to the Commissioner or Department are used in the subdivisions and sections listed in subdivision (a) of this section, local governments should substitute for these terms the title of the local official or agency performing the equivalent function.